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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)
_____)

CC Docket No. 96-98

FURTHER REPLY COMMENTS OF BELL ATLANTIC

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Bell Atlantic¹ submits the following reply to comments in response to issues raised in the Commission's Notice of Proposed Rulemaking concerning implementation of section 251.²

Summary

The Commission should leave any questions concerning the implementation of dialing parity to the States. The 1996 Act would not permit the Commission to order a Bell company to provide intraLATA presubscription before that company had been authorized to provide interLATA service in a particular State.

The Commission should expedite the transfer on North American Number Plan administration and local numbering administration to a new entity. It should generally

¹ The Bell Atlantic telephone companies serving New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia.

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182 (rel. April 19, 1996) ("Notice").

leave the States free to deal locally with area code exhaust issues in accordance with the principles of the Commission's *Ameritech* decision.

The Commission should reject attempts by certain carriers to use technical network disclosure requirements to hinder exchange carrier's ability to offer new services and thereby to gain a competitive advantage. Its rules should not impose rigid advance notice requirements.

Finally, the Commission should not write detailed federal requirements for access to rights of ways, an area in which the States have the primary regulatory authority. It should also reject requests by some commentators to adopt rules that would deprive utilities of the ability to use their property to serve their customers.

1. Dialing Parity

The States Should Decide Issues Relating To Dialing Parity.

Many commentators agree with Bell Atlantic that the States should decide issues relating to dialing parity. Although some argue for federal standards, they do not provide any reason why the same rules must be followed in New Mexico and New York or why the public in those States will not be protected by the local state regulators.

Although the Notice observed that there already is substantial variation in the intraLATA toll dialing parity requirements and implementation methodologies of individual States,³ none of the proponents of a federal standard has shown how they, or more important, consumers have been harmed by this locally tailored implementation. Without such a demonstration, the Commission should not interfere with State activities.

³ Notice ¶ 210.

The comments are virtually unanimous in urging the Commission to reject the suggestion that exchange carriers be required to add an additional presubscription option for international calls.⁴ They all agree that this capability is not currently available, and there is no suggestion anywhere in the record that there is any consumer demand for multiple PICs. This idea should be rejected.

Sprint asks the Commission to order the Bell companies to provide intraLATA presubscription by a certain date, without regard to whether they have been authorized to provide interLATA services.⁵ This request ignores the plain intent of Congress in section 271(e)(2)(B) that Bell interLATA entry and intraLATA presubscription occur simultaneously, except in single-LATA States and where a State had already acted.

The fact that this section does not explicitly restrict the Commission's authority does not mean that the Commission may order presubscription now. The overwhelming majority of intraLATA toll calls are intrastate and within the jurisdictions of the respective States. Nothing in the 1996 Act suggests that Congress intended to remove this jurisdiction from the States and give it to the Commission.⁶ The fact that the Conference Committee adopted the Senate version of section 271(e)(2)(B) that referred

⁴ Only one commentator supports this idea. TRA at 4. TRA was also the only commentator to favor end user balloting for intraLATA presubscription (TRA at 5), an idea that should also be rejected.

⁵ Sprint at 6. Both AT&T and MCI recognize that section 271(e)(2)(B) limits the Commission's authority to order the Bell companies to provide intraLATA presubscription before interLATA entry. AT&T at 5; MCI at 2-3.

⁶ Congress did not exclude section 251 from the scope of section 2(b).

only to the States (rather than the House version that referred to both the States and the Commission) suggests that the Committee realized that there was no need to give direction to the Commission on this matter because the Commission had no jurisdiction.

In addition to the Commission's legal inability to do what Sprint asks, there is also a practical problem with requiring interstate intraLATA presubscription before a State has required intrastate intraLATA presubscription. Such an order would effectively require a "three-PIC" capability — different presubscription choices for interLATA, interstate intraLATA and intrastate intraLATA toll.⁷ As all commentators agree, this capability is not available today, and as virtually all agree, it should not be required.

As with the other details of intraLATA dialing parity implementation, the States should decide the mechanism for recovery of intraLATA presubscription costs, costs that are predominantly intrastate in nature. A number of commentators urge the Commission to dictate a national cost recovery mechanism, but do not show that the various plans developed in the States do not serve the public interest. If the Commission feels it must take on this task, Bell Atlantic would urge it to adopt the Pennsylvania commission's plan, which allows exchange carriers to recover the costs from interexchange carriers proportioned on an access line basis and amortized over a three-

⁷ Neither of the proponents of this approach suggest that the federal interest in the relatively small volume of interstate intraLATA calls is so great that the Commission has the power to preempt State rules for the much larger volumes of intrastate intraLATA traffic to avoid this three-PIC result.

year period.⁸ This approach allows prompt reimbursement of expenses from those carriers which benefit from the new capability.

Finally most long distance providers agree with Bell Atlantic that exchange carriers should not be required to conduct educational programs about intraLATA presubscription.⁹ In a competitive marketplace, the competitors rather than the regulators should determine how they inform their customers.

Access to Telephone Numbers, Operator Services,
Directory Assistance and Directory Listing

There appears to be general agreement among the commentors as to what services incumbent exchange carriers must provide under section 251(b)(4). Operator services that are “telecommunications services” as defined in the Act must be offered for resale. If those services are provided today to non-carrier customers, the wholesale pricing provisions of section 251(b)(4) apply. Operator services that are not telecommunications services need not be offered for resale, but an exchange carrier must provide access to those services under section 251(b)(3).

AT&T asks that the Commission require carriers providing operator services and directory assistance to allow other carriers to put their own “brand” on those services.¹⁰ This is a matter best left to negotiations between carriers, rather than Commission dictate. However, AT&T goes on to ask that if technical limitations prevent

⁸ *Investigation into IntraLATA Interconnection Arrangements*, Opinion and Order, Pa PUC Docket No. I-00940034 (Dec. 14, 1995) at 18.

⁹ *E.g.*, MCI at 5-6; AT&T at 6-7; Sprint at 8-9.

¹⁰ AT&T at 9, n.12.

this,¹¹ then the operator services provider should not be allowed to brand the services at all. Such an order would violate the requirements of TOCSIA and various State regulations that certain types of operator services be branded.¹²

Sprint asks the Commission to order that “if the incumbent LEC’s customers are not assessed a charge for inclusion in the directory listing, neither should the CLEC’s customers be charged.”¹³ Where the CLEC buys retail dialtone service and resells it, then its customers should get directory listings on the same terms as customers of the incumbent. However, if the CLEC buys less than that — for example, unbundled local loops at a price based on the cost of the loop— then the CLEC should pay for its customer’s listing because that cost would not be recovered in the loop price.

2. Number Administration

The comments generally support the Commission’s tentative conclusions concerning number administration — that the Commission need do nothing further to satisfy the Act’s requirement to appoint a new NANP Administrator; that the Commission should retain the authority to set policy on all aspects of number administration and should delegate matters involving the implementation of new area codes to the States, and the *Ameritech* order should continue to provide guidance to the States; and that the Commission should delegate to Bellcore, the exchange carriers and

¹¹ For example, if a carrier buys local exchange service for resale to its customers, the incumbent provider’s operators would have no way of knowing that the call is from the other carrier’s customer in order to brand it with that carrier’s name.

¹² 47 U.S.C. § 226(b)(1)(A).

¹³ Sprint at 10.

the States the authority they had before enactment. Many commentators echo Bell Atlantic's suggestion that the Commission proceed expeditiously with the process of transferring NANP administration functions from Bellcore and local administration from the exchange carriers to a new administrator.¹⁴

The only exception to this display of industry consensus is the request of a few carriers that the Commission use this proceeding to outlaw area code overlays in favor of requiring geographic splits.¹⁵ This request is not joined by other new entrant exchange carriers,¹⁶ and, in fact, one non-exchange-carrier urges that overlays should be presumed the preferred solution to NPA exhaust.¹⁷

Different States have devised different solutions to the increasing instance of area code exhaust. In Maryland, the Commission recently adopted an overlay NPA after weighing all the arguments advanced by the overlay opponents in this proceeding. The Maryland Commission characterized the overlay as "the most far-sighted, least disruptive and most economical proposal" and as "the best option for subscribers of telephone and communication services in Maryland, which must be our primary

¹⁴ Bell Atlantic agrees with TCG that its recent request for additional NXX codes in New Jersey is a good example of why the Commission must act quickly to transfer these functions to a third party. TCG at 2-3. Before Bell Atlantic had taken any action whatever on TCG's request, TCG was already threatening litigation and complaints to the Commission. The only reason assigning the code was delayed at all — and the delay was only a matter of days — was that TCG's original application failed to disclose its basis for receiving the code assignment. Bell Atlantic has better things to do with its time and energy than dealing with overly litigious carriers which don't fill out forms correctly.

¹⁵ Cox at 3-6; NCTA at 9-10; MCI at 11-12.

¹⁶ *E.g.*, MFS at 3-5.

¹⁷ PageNet at 28-29.

consideration.”¹⁸ The Commission rejected arguments that the overlay was anti-competitive and found that it “treats all technologies and telecommunications companies fairly”¹⁹ and “is competitively fair both to various telephonic services and to competing companies which offer such services.”²⁰

The Commission should reject the request to preclude overlays and should leave these decisions to the States under the principles of the *Ameritech* order.

3. Notice of Technical Changes

The Commission should reject the attempts of some commentators to turn a technical network disclosure requirement into a competitive weapon. These commentators seek to delay exchange carrier deployment of new technologies and services for periods of up to eighteen months, solely in order to permit their own early market entry. Some, such as MCI, want the Commission to force the exchange carriers to delay for a full year any change that improves services to the public, including changes to internal operations support systems that make network support more efficient.²¹ Other competitors ask that an exchange carrier be ordered to release detailed descriptions of every minor detail of planned new technology sufficiently in advance that they can clone and implement the planned services while the exchange carriers wait out the notice period.²²

¹⁸ *Inquiry Into The Merits of Alternative Plans for New Telephone Area Codes in Maryland*, Order No. 72274, Md. PSC Case No. 8705 (Nov. 22, 1995) at 12.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 14.

²¹ MCI at 15-16.

²² *E.g.*, MFS at 14-15; AT&T at 24-25; ACSI at 11-12; ALTS at 2-3.

The Commission should reject these anticompetitive requests. Instead, it should follow the dictates of the statute. It should reject requests for artificial delays that will ill serve the public, and it should limit the information that needs to be disclosed to changes that affect the interconnection or interoperability of the incumbent exchange carrier's network or facilities with facilities of other service providers.²³

Nearly a decade of experience has shown that the rigid advance disclosure obligations of Computer II and Computer III have served not to facilitate interconnection, but only to delay provision of new services to the public. This is because most new interface specifications are based upon industry standards, Commission rules and other widely known sources that have been publicly available for some time before the formal disclosure under the Rules. As a result, interface equipment and software are already widely available, and the lengthy advance notice requirements serves no purpose.

To avoid a similar result here, the Commission should refrain from promulgating fixed notice periods. Instead, it should confirm that the existing disclosure requirements of the "All Carrier Rule" still apply. That rule, which applies to all common carriers, requires disclosure of specifications that affect interconnection of terminal equipment or other networks a "reasonable time" in advance of deployment.²⁴ This rule has afforded sufficient advance notice of most network changes for more than

²³ 47 U.S.C. § 251(c)(5).

²⁴ 47 C.F.R. § 68.110(b); *Computer II Reconsideration Order*, 84 F.C.C. 2d 50, 82-83 (1980); *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5911, n.270 (1991).

fifteen years. The long successful experience of providing network specifications under this rule shows that there is no need for a fixed notice period.²⁵

MCI also objects to using industry fora as a means of disclosing interface specifications.²⁶ MCI's only supporting argument is a rehash of its allegation that the standards-setting process is dominated by the Bell companies.²⁷ Even if this were true — which Bell Atlantic has previously demonstrated it is not²⁸ — it has no bearing on whether an exchange carrier's disclosure obligation may be satisfied by releasing information through those bodies. The Commission should disregard MCI's irrelevant arguments.²⁹

4. Access to Rights of Way

Some commentators urge the Commission to ignore the careful balance struck by Congress in assigning responsibilities under section 224 by usurping the role of

²⁵ The exceptions to the All Carrier Rule have been the fixed disclosure requirements prescribed for the Bell companies, AT&T and GTE under the Computer II and Computer III rules. The Commission should revise these disclosure periods to be consistent with the All Carrier Rule.

²⁶ MCI at 17-18.

²⁷ MCI at 17-18 and Att. C at 9-12.

²⁸ MCI's assertion of Bell company dominance of standards bodies, which is primarily based upon a count of attendees at certain meetings, is seriously in error. See Reply Comments of Bell Atlantic, CC Docket No. 95-20 at 20-22 (filed May 19, 1995); Bell Atlantic *ex parte*, CC Docket No. 95-20 (filed May 22, 1996).

²⁹ Bell Atlantic does not object to issuing interface disclosures over the Internet, as some parties suggest. *E.g.*, ALTS at 3-4; MFS at 13-14. However, as a leading manufacturer points out, the publications containing the specifications often contain information that is proprietary to the manufacturers (Northern Telecom at 2-3), and the documents themselves are frequently written by others and copyrighted. Therefore, the Commission should not require the specifications themselves to be published on the Internet.

state regulatory authorities³⁰ and displacing the current framework of negotiated agreements governing access with detailed federal mandates. The Commission cannot do the former and should not do the latter. Both the original Pole Attachment Act and the 1996 amendments provide for state regulation in the event that parties are unable to reach agreement on the rates, terms and conditions of access.³¹ The Commission has statutory authority to act only if both private negotiations have failed and state authorities have declined to assume jurisdiction.

There is also no need for the Commission to issue detailed rules to permit carriers to comply with the local competition and long distance entry requirements of sections 251 and 271. The pole attachment provisions at issue here are largely self-effectuating; in fact, in the 1996 amendments, Congress specifically directed the Commission to issue regulations only to implement the pricing provisions of the Act.³²

³⁰ *E.g.*, TCG at 9 (urging Commission to allow parties to opt for federal jurisdiction for any pole attachment dispute); Continental Cablevision, et al., at 21 (urging Commission to impose federal pole attachment rules even in states that have certified that they are regulating such matters).

³¹ 47 U.S.C. § 224(c)(1).

³² 47 U.S.C. § 224(e)(1).

The other provisions added by the 1996 amendments to not require implementing regulations at all, and no rules are necessary.³³

Some commentators urge the Commission to impose requirements that would exceed its statutory authority. First, some urge the Commission to ignore the plain meaning of the Act's direction that utilities provide access to "poles, ducts, conduits and rights-of-way," by expanding the scope of the access obligation to encompass other structures and facilities,³⁴ such as controlled environmental vaults,³⁵ and riser cable or utility closets in multidwelling units.³⁶ This the Commission may not do. "Poles," "ducts" and "conduits" are all words with clear meanings, and "rights-of-way" is a well-established property law concept connoting public or private easements or licenses. Had Congress intended more expansive access, it would have written the law that way. Any attempt by the Commission to extend access obligations beyond the poles, ducts, conduits

³³ Section 224(f) requires that other providers be given nondiscriminatory access to poles, ducts, conduits and rights-of-way. The long history of interpretation by both the Commission and state regulators of the meaning of nondiscrimination in the common carrier context obviates the need for more detailed regulations to provide guidance to the parties on that point. Similarly, parties have proven their ability to work out reasonable and mutually acceptable notice and payment provisions over the 18-year history of negotiated pole attachment agreements. Specific disagreements over these issues should be left, as they are now, to be determined on a case-by-case basis through the state or Federal complaint process, as appropriate.

³⁴ *E.g.*, AT&T at 14-15; MFS at 9; ALTS at 7.

³⁵ Controlled environmental vaults are more appropriately addressed under the Act's collocation provisions. *See* Reply Comments of Bell Atlantic at 15-16 (filed May 30, 1996).

³⁶ As with rights-of-way, the license or other legal basis upon which utilities obtain access to certain privately-owned facilities in multidwelling unit buildings may not permit third party access, and the Commission has no authority to abrogate such private property rights.

and rights-of-way would exceed its statutory mandate and constitute an unauthorized taking of a utility's property in violation of the Fifth Amendment.³⁷

Second, AT&T suggests that the Commission should require a facility owner to give notice of plans to modify its own attachments, even if such modifications would have no impact on others because no modifications will be made to the facility itself.³⁸ Such notification would serve no useful purpose, as attachers have no role to play in the facility owner's maintenance of its own attachments. More importantly, any such requirement would exceed the Commission's authority under section 224(h), which explicitly requires notice only if the facility owner intends to modify or alter the facility itself.

Perhaps the most overreaching demand is AT&T's suggestion that utilities must construct new or additional facilities simply to accommodate competitors once capacity limits have been reached at existing facilities.³⁹ While Congress required utilities to provide access to existing facilities, within the limits of capacity constraints and safety considerations, nothing in the statute could reasonably be read to require additional investment by utilities and their ratepayers on an ongoing basis in order to subsidize market entry by competitors and their customers. Had Congress intended to require utilities to build additional facilities to meet competitors' future demands, it would have had to have made that requirement explicit.

³⁷ *FCC v. Florida Power Co.*, 480 U.S. 245 (1987); *Loretto v. Teleprompter Manhattan CATV*, 458 U.S. 419 (1982); *Bell Atlantic v. FCC*, 24 F.3d 1441, 1446-47 (D.C. Cir. 1994).

³⁸ AT&T at 20.

³⁹ AT&T at 16.

Finally, several commentors urge the Commission to adopt rules in this proceeding to implement section 224(g) concerning cost imputation requirements for facility owners⁴⁰ and to permit abrogation and renegotiation of all existing attachment agreements.⁴¹ Adoption of rules governing those issues in this proceeding would violate the Administrative Procedures Act, because the Commission has not given notice of its intention to adopt such rules or provided an opportunity for parties to develop a full record on those issues.⁴²

In requiring utilities to grant access to certain of its facilities, Congress did not divest the utility of its ownership rights and control over those facilities. Nor could it have done so without raising serious constitutional concerns under the takings clause of the Fifth Amendment. Yet many of the onerous restrictions and conditions suggested by commentors would have essentially this effect.

⁴⁰ AT&T at 21.

⁴¹ *E.g.*, ALTS at 7; American Communications Services at 7.

⁴² 5 U.S.C. § 553; *see also Expanded Interconnection with Local Telephone Facilities*, 8 FCC Rcd 7341, 7345 (1993)(undertaking de novo examination of need for a “fresh look” remedy because original rulemaking proposal had said nothing about a “fresh look” requirement).

There is no need for the Commission to rush to adopt imputation or affiliate pricing rules under section 224(g), which is self-implementing. Affiliates of utilities must pay the same rates as third parties for attachments. With regard to cost imputation for utilities themselves, rates for regulated services already bear a proportionate share of the costs which pole attachment rates are intended to recover. The Commission’s current proceeding in Docket No. 96-112 is considering allocation of costs associated with unregulated uses of outside plant facilities. Moreover, utilities already must absorb the full cost of poles, ducts, conduits and use of rights-of-way less revenues received from third parties for attachments. As a result, much greater costs are borne by the utility than by any competing service provider using the utility’s facilities.

For example, some commentators urge the Commission to treat the facility owner exactly the same as any attaching entity.⁴³ Such a requirement would contravene important public policy goals and constitute a logical impossibility under current rules. For example, some would prohibit a facility owner from reserving capacity to meet its own projected use requirements⁴⁴ and would instead require the utility to make existing capacity available even if it will need the space to meet its own needs.⁴⁵ Since most facility owners are “providers of last resort,” such a requirement could jeopardize their ability to meet their obligations to provide service in a timely fashion to all who request it.⁴⁶ Similarly, it is impossible for facility owners to be treated exactly the same as attaching entities under current pricing rules at the federal level, which require the facility owner to absorb all costs associated with the “unusable” portion of the facility. Any rules adopted by the Commission in this proceeding should recognize that the facility owner, whose investment supports access by all others, has invested in this facility for the

⁴³ E.g., AT&T at 15; Sprint at 16; MCI at 21; TRA at 13; Time Warner at 13.

⁴⁴ E.g., ACSI at 8; NextLink at 5-6.

⁴⁵ AT&T’s suggestion that facility owners must plan to use the space within no more than one year is unrealistic. AT&T at 16. Bell Atlantic owns 2,589,045 poles and 109,583 miles of conduit space within its service region and plans its facility upgrades and replacements in three-year increments. Shortening the planning cycle to one year would be inefficient and burdensome, requiring repetitive devotion of personnel and resources to the planning process.

⁴⁶ Others suggest that the facility owner should be permitted to reserve space for future use only if others can do the same. GST at 5-6. While Bell Atlantic’s planning for facility modifications would take into account anticipated future demand for access from other service providers, most commentators agree that non-owners should be permitted to obtain space only on a first come, first served basis. E.g., Time Warner at 13; Public Utilities Commission of Ohio Staff at 12; Public Service Co. of New Mexico at 19; NYNEX at 13; GTE at 26; SBC at 18; U S WEST at 16. Any entity could

primary purpose of meeting the service needs of its own customers and its larger public service obligations under state law, and it must be permitted to do so.

A few Scrooge-like commentators contend or imply that only electric utilities are permitted to deny access due to insufficient capacity or for safety or reliability reasons.⁴⁷ But the vast majority of commentators acknowledge, explicitly or implicitly, that even local exchange carriers cannot physically provide access if capacity is exhausted, and that the public's safety and network reliability must always be of paramount concern.⁴⁸

If the Commission were to decide that it should issue detailed federal rules governing nondiscriminatory access, which it should not and need not do, the record in this proceeding demonstrates the infeasibility of formulating any single comprehensive standard to govern denial of access either on grounds of insufficient capacity or due to safety or network reliability concerns.

The capacity of any specific facility is a product of numerous and highly individualized factors that do not lend themselves to regulatory formulæ. Such factors include the height, age, physical composition and other physical characteristics of the facility itself, local climatic conditions that affect structural strength and storm loadings, the number and types of other attachments currently in or on the facility, and a myriad of

effectively "reserve" space by paying the requisite rental fee for the space, even if not actively using the space immediately.

⁴⁷ AT&T at 16-17; NCTA at 5.

⁴⁸ *E.g.*, MFS at 10; NYNEX at 13; BellSouth at 15.

other variables. Insufficient capacity is a question of fact that must be determined on a case-by-case basis.⁴⁹

The record also demonstrates that many facilities have finite capacity limits.⁵⁰ For example, under applicable safety standards, poles have minimum above-ground clearance requirements that make the initial 18 to 19 feet of the pole unusable for attachments. In addition, the top 4½ feet of any joint use pole is reserved for electric utility use, and an additional 40 inches of clearance must exist between the electric utility's attachment and any telecommunications or CATV attachment. Assuming a single Bell Atlantic attachment at the bottom of the useable space, that leaves only two to three feet of useable space on a 35-foot pole for other attachments.⁵¹ While taller poles are available in five-foot increments, most utilities are not equipped to handle poles greater than 50 feet in length.⁵² The Commission should, therefore, reject MCI's proposal to establish a rebuttable presumption that access is technically possible,⁵³ and instead weigh the relevant facts on a case-by-case basis in any complaint proceeding.

Similarly, the record shows that, in order to permit access by others in a way that protects public safety and essential network reliability, facility owners must

⁴⁹ Sprint at 16 ("There is no standard formula to determine whether there is sufficient capacity on a pole, duct, conduit or right-of-way..."); Massachusetts Electric Co. et al., at 8-15.

⁵⁰ E.g., Continental Cablevision, et al., at 10-11; Massachusetts Electric Co., et al., at 10.

⁵¹ The first six feet of the pole are underground.

⁵² Poles exceeding 50 feet in length must be installed and maintained using special expensive equipment, which Bell Atlantic does not own.

⁵³ MCI at 21.

adhere to a combination of national safety codes and standards industry practices, and comply with a number of other Federal, state and local laws.⁵⁴ It would be virtually impossible for the Commission to specify a single national standard that encompasses all of the appropriate considerations, and it need not do so. Rather, in any complaint proceeding, a showing by the utility that it has denied access on the basis of any existing legal requirement binding on it, or based on an engineering analysis that shows access would cause a threat to public safety or network reliability, should create a rebuttable presumption that access was lawfully denied.

Finally, with regard to notice requirements before altering or modifying facilities, these issues have historically been worked out without government intervention by the parties and should continue to be left to negotiations. If the Commission should nevertheless decide that some minimum notice provision is required, it should simply require notification of all attaching entities known to the facility owner⁵⁵ by first class mail, postage prepaid,⁵⁶ not less than 30 days before the planned modification is to occur.

⁵⁴ *E.g.*, Further Comments of Bell Atlantic at 12; GTE at 25; Delmarva Power & Light Co. at 17-21; UTC and Edison Electric Institute at 8-9; American Electric Power, et al., at 18-29; Virginia Power at 11-14; Massachusetts Electric at 10-12.

⁵⁵ A number of facility owners report the presence of unauthorized and unidentified attachments on their facilities. In order to ensure all parties equal opportunity for access and to facilitate compliance with the Act's notification requirements, the Commission should prohibit any attachment without the permission of the facility owner and should require each attaching entity to clearly identify its attachments. *E.g.*, American Electric Power Service at 52-54; Virginia Power at 19; Delmarva Power & Light at 24.

⁵⁶ At the facility owner's option, notification should also be deemed adequately made if the owner uses a more rapid form of communication, such as facsimile or an overnight document delivery service.

That notice period should give attaching entities sufficient time to determine if they wish to make modifications of their own and organize the work effort.

Some parties have also urged the Commission to establish unrealistic minimum periods for utilities to process applications for and physically grant access to attaching entities — approximately 30 days.⁵⁷ Utilities must complete an engineering analysis in response to the specific request, estimate the costs of the make ready work if access is feasible, permit the attaching entity to determine whether to proceed with the attachment, and complete the make ready work to permit access. Given these required steps and the increasing number of requests that must be processed, the Commission should not set any specific period for processing requests at this time. If a pattern of unreasonable delays should surface through the complaint process, the Commission or state commissions, as appropriate, can establish maximum periods based on experience with a higher volume of requests.⁵⁸ If the Commission chooses nevertheless to establish such a minimum period, it should give utilities six months to complete the steps necessary to ensure safe and nondiscriminatory access. Any shorter time period would inappropriately force a utility to give its duty to accommodate competitors priority over its duty to expeditiously meet the service needs of its own customers.

⁵⁷ *E.g.*, TCG at 9.

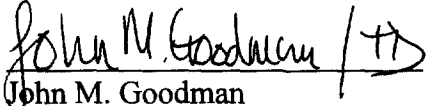
⁵⁸ AT&T asks the Commission to require a utility to grant competitors access to its maps showing the location of its facilities. AT&T at 19. Such proprietary information should be made available only to attaching entities that have signed nondisclosure agreements to protect the confidentiality of this information.

Conclusion

The Commission should adopt new regulations only when required by the 1996 amendments to the Communications Act and should not regulate where Congress intended the parties to negotiate or left for the States.

Respectfully submitted,

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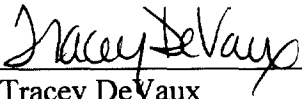

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Dated: June 4, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 1996 a copy of the foregoing "Further Reply Comments of Bell Atlantic" was served on the parties on the attached list.



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